

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL MALOTT,

Plaintiff,

v.

LINCOLN MARSHALL, et al.,

Defendants.

CIVIL ACTION NO. 12-14476

DISTRICT JUDGE DENISE PAGE HOOD

MAGISTRATE JUDGE MARK A. RANDON

REPORT AND RECOMMENDATION TO DISMISS CASE WITHOUT PREJUDICE

This matter is before the Court on Defendants' Motion to Transfer Venue (Dkt. Nos. 9, 10). Plaintiff is a Michigan prisoner, confined at the Marquette Branch Prison. This prison is located in the Western District of Michigan, and Plaintiff's Complaint allegations arise out of events that occurred there.

Defendants ask the Court to either: (1) transfer Plaintiff's case to the Western District of Michigan, or (2) dismiss the case without prejudice. On January 31, 2013, Plaintiff submitted a letter indicating he filed the same lawsuit in the Western District of Michigan (Dkt. No. 14).¹ Plaintiff insists that he only filed one lawsuit; he also seems to understand that the Western District is the proper venue and needs clarification on how to proceed.² It appears, then, that this case was inadvertently filed in the Eastern District of Michigan.

¹Plaintiff's letter also says he was charged two filing fees: one from the Western District and one from the Northern "District," which the Court assumes means the Northern Division.

² Plaintiff acknowledges that his lawsuit is against "prison officials in Marquette Michigan" (Dkt. No. 14).

This Magistrate Judge has confirmed that Plaintiff has the same lawsuit pending in the Western District before Judge Gordon J. Quist: Case No.: 2:12-cv-00404-GJQ-TPG. As such, a transfer would not be proper; instead, this case should be dismissed without prejudice and Plaintiff's pending case in the Western District of Michigan should proceed. In addition, Plaintiff's prison account should not be charged any additional filing fees with respect to this case.

Accordingly, this Magistrate Judge **RECOMMENDS** that Plaintiff's lawsuit filed in the Eastern District of Michigan be **DISMISSED WITHOUT PREJUDICE** and that no additional fees be charged to his prison account for this case (No. 12-14476).³ Going forward, Plaintiff should use case number 12-00405 and all papers should be sent to the courthouse in the Western District of Michigan.

The parties to this action may object to and seek review of this Report and Recommendation, but are required to act within fourteen (14) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505, 508 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981). The filing of objections which raise some issues, but fail to raise others with specificity, will not preserve all the objections a party might have to this Report and Recommendation. *See Willis v. Sec'y of Health & Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370,

³Defendants also filed a Motion for Leave to Take Plaintiff's Deposition (Dkt. No. 11). This Court lacks jurisdiction to resolve this motion; Defendants may re-file their motion in the Western District of Michigan.

1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Within fourteen (14) days of service of any objecting party's timely filed objections, the opposing party may file a response. The response shall be no more than 20 pages in length unless, by motion and order, the page limit is extended by the court. The response shall address each issue contained within the objections specifically and in the same order raised.

s/Mark A. Randon
MARK A. RANDON
UNITED STATES MAGISTRATE JUDGE

Dated: February 6, 2013

Certificate of Service

I hereby certify that a copy of the foregoing document was served on the parties of record on this date, February 6, 2013, electronically and by first class mail.

s/Eddrey O. Butts
(Substitute)
Case Manager to Magistrate Judge Mark A. Randon